

that is executed by an insured depository institution in connection with a securitization or in the form of a participation solely because the agreement does not meet the “contemporaneous” requirement of 12 U.S.C. 1821(d)(9), 1821(n)(4)(I), or 1823(e).

(h) *Limitations.* The consents set forth in this section do not act to waive or relinquish any rights granted to the FDIC in any capacity, pursuant to any other applicable law or any agreement or contract except as specifically set forth herein. Nothing contained in this section alters the claims priority of the securitized obligations.

(i) *No waiver.* Except as specifically set forth herein, this section does not authorize, and shall not be construed as authorizing the waiver of the prohibitions in 12 U.S.C. 1825(b)(2) against levy, attachment, garnishment, foreclosure, or sale of property of the FDIC, nor does it authorize nor shall it be construed as authorizing the attachment of any involuntary lien upon the property of the FDIC. Nor shall this section be construed as waiving, limiting or otherwise affecting the rights or powers of the FDIC to take any action or to exercise any power not specifically mentioned, including but not limited to any rights, powers or remedies of the FDIC regarding transfers or other conveyances taken in contemplation of the institution’s insolvency or with the intent to hinder, delay or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

(j) *No assignment.* The right to consent under 12 U.S.C. 1821(e)(13)(C) or 12 U.S.C. 1825(b)(2), may not be assigned or transferred to any purchaser of property from the FDIC, other than to a conservator or bridge bank.

(k) *Repeal.* This section may be repealed by the FDIC upon 30 days notice provided in the FEDERAL REGISTER, but any repeal shall not apply to any issuance made in accordance with this section before such repeal.

[75 FR 60297, Sept. 30, 2010]

#### § 360.7 Post-insolvency interest.

(a) *Purpose and scope.* This section establishes rules governing the calculation and distribution of post-insol-

vency interest to creditors with proven claims in all FDIC-administered receiverships established after June 13, 2002.

(b) *Definitions*—(1) *Equityholder.* The owner of an equity interest in a failed depository institution, whether such ownership is represented by stock, membership in a mutual association, or otherwise.

(2) *Post-insolvency interest.* Interest calculated from the date the receivership is established on proven creditor claims in receiverships with surplus funds.

(3) *Post-insolvency interest rate.* For any calendar quarter, the coupon equivalent yield of the average discount rate set on the three-month Treasury bill at the last auction held by the United States Treasury Department during the preceding calendar quarter, and adjusted each quarter thereafter.

(4) *Principal amount.* The proven claim amount and any interest accrued thereon as of the date the receivership is established.

(5) *Proven claim.* A claim that is allowed by a receiver or upon which a final non-appealable judgment has been entered in favor of a claimant against a receivership by a court with jurisdiction to adjudicate the claim.

(c) *Post-insolvency interest distributions.* (1) Post-insolvency interest shall only be distributed following satisfaction by the receiver of the principal amount of all creditor claims.

(2) The receiver shall distribute post-insolvency interest at the post-insolvency interest rate prior to making any distribution to equityholders. Post-insolvency interest distributions shall be made in the order of priority set forth in section 11(d)(11)(A) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(d)(11)(A).

(3) Post-insolvency interest distributions shall be made at such time as the receiver determines that such distributions are appropriate and only to the extent of funds available in the receivership estate. Post-insolvency interest shall be calculated on the outstanding balance of a proven claim, as reduced from time to time by any interim dividend distributions, from the date the receivership is established until the principal amount of a proven claim has

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been fully distributed but not thereafter. Post-insolvency interest shall be calculated on a contingent claim from the date such claim becomes proven.

(4) Post-insolvency interest shall be determined using a simple interest method of calculation.

[67 FR 34386, May 14, 2002]

### **§ 360.8 Method for determining deposit and other liability account balances at a failed insured depository institution.**

(a) *Purpose.* The purpose of this section is to describe the process the FDIC will use to determine deposit and other liability account balances for insurance coverage and receivership purposes at a failed insured depository institution.

(b) *Definitions*—(1) The *FDIC Cutoff Point* means the point in time the FDIC establishes after it has been appointed receiver of a failed insured depository institution and takes control of the failed institution.

(2) The *Applicable Cutoff Time* for a specific type of deposit account transaction means the *earlier* of either the failed institution's normal cutoff time for that specific type of transaction or the *FDIC Cutoff Point*.

(3) *Close-of-Business Account Balance* means the closing end-of-day ledger balance of a deposit or other liability account on the day of failure of an insured depository institution determined by using the *Applicable Cutoff Times*. This balance may be adjusted to reflect steps taken by the receiver to ensure that funds are not received by or removed from the institution after the *FDIC Cutoff Point*.

(4) A *sweep account* is an account held pursuant to a contract between an insured depository institution and its customer involving the pre-arranged, automated transfer of funds from a deposit account to either another account or investment vehicle located within the depository institution (*internal sweep account*), or an investment vehicle located outside the depository institution (*external sweep account*).

(c) *Principles*—(1) In making deposit insurance determinations and in determining the value and nature of claims against the receivership on the institu-

tion's date of failure, the FDIC, as insurer and receiver, will treat deposits and other liabilities of the failed institution according to the ownership and nature of the underlying obligations based on end-of-day ledger balances for each account using, except as expressly provided otherwise in this section, the depository institution's normal posting procedures.

(2) In its role as receiver of a failed insured depository institution, in order to ensure the proper distribution of the failed institution's assets under the FDI Act (12 U.S.C. 1821(d)(11)) as of the FDIC Cutoff Point, the FDIC will use its best efforts to take all steps necessary to stop the generation, via transactions or transfers coming from or going outside the institution, of new liabilities or extinguishing existing liabilities for the depository institution.

(3) End-of-day ledger balances are subject to corrections for posted transactions that are inconsistent with the above principles.

(d) *Determining closing day balances*—(1) In determining account balances for insurance coverage and receivership purposes at a failed insured depository institution, the FDIC will use *Close-of-Business Account Balances*.

(2) A check posted to the *Close-of-Business Account Balance* but not collected by the depository institution will be included as part of the balance, subject to the correction of errors and omissions and adjustments for uncollectible items that the FDIC may make in its role as receiver of the failed depository institution.

(3) In determining *Close-of-Business Account Balances* involving sweep accounts:

(i) For internal sweep accounts, the FDIC will determine the ownership of the funds and the nature of the receivership claim based on the records established and maintained by the institution for that specific account or investment vehicle as of the closing day end-of-day ledger balance. (For example, if a sweep account entails the daily transfer of funds from a demand deposit account to a Eurodollar account at a foreign branch of the insured depository institution, if the institution should fail on that day, the FDIC would treat the funds swept to the